REMARKS

The Examiner is thanked for his indication of allowance of the subject matter of claims 22-27 and 29-58. Claims 22-27, 29-69 remain pending.

Claims 59-69 have been rejected under 35 U.S.C. §101 as being directed to non-statutory subject matter. The rejection alleges that claims 59-69 are directed to a color palette, which it characterizes as merely an arrangement of data.

To address this issue, Claim 59 now recites the step of storing said palette as a computer-readable medium for display and selection of individual colors during the creation of an image on a computer by a user. The claim recites subject matter that is both tangible, i.e. the storage of information on a physical structure that is employed in conjunction with a computer, and useful, namely the provision of selectable colors for use in creating an image on the computer. Accordingly, the claim recites a statutory process.

Claim 69 recites a computer-readable medium containing a color palette for display and selection of individual colors in a graphical user interface during the creation of an image on said computer. For reasons analogous to those presented above, claim 69 also satisfies 35 U.S.C. §101. Accordingly, Applicants respectfully request withdrawal of the rejection of the claims 59-69 under 35 U.S.C. §101.

Claim 61 has been rejected under 35 U.S.C. §112, second paragraph. Applicant believes the claim was definite as previously presented, as supported by the interpretation set forth in the Office Action. However, Claim 61 has been amended as suggested by the Examiner for the sake of expediting prosecution.

In Applicant's December 8, 2005 response, Applicant stated that the Adobe reference does not disclose two different groups of colors (web-safe colors and non-

web-safe colors) arranged in respective contiguous groupings within a palette. In response on pages 7 and 8 of the Office Action, the Examiner states that the Adobe reference does disclose two different types of colors and provides the user with the option of selecting specific web-safe or non-web-safe colors and directs the Applicant's attention to page 334, under "To Select All Web-Safe Colors" and 'To Select All Non-Web-Safe Colors". But the Examiner does not address the claimed feature of placing web-safe chromatic colors, including blends created from the web-safe chromatic colors, in a third contiguous grouping within the palette.

The Adobe reference at page 334 provides the user with the choice to select between either all web-safe colors or all non-web-safe colors. When the user selects one of these options, he or she is presented with a palette that contains only web-safe colors, or only non-web-safe colors. The Adobe reference does not disclose or suggest a color palette containing both web-safe color choices and non-web-safe color choices in respective contiguous areas on the same color palette. It does not disclose how colors are arranged in a palette.

The Microsoft reference, discussed on page 8 of the Office Action, discloses standard colors organized by grouping achromatic colors together. However, it does not disclose or suggest that the chromatic colors are separated into respective web-safe and non-web safe contiguous groupings in the palette. In fact, as pointed out in Applicant's previous response, it teaches the opposite, namely that the web-safe and non-web-safe colors of similar hues are intermingled with one another.

The Berretta patent is incorporated for the disclosure of displaying individual colors in a predetermined order according to color space coordinates such as order of lightness and chroma values. However, the Berretta patent does not disclose or

suggest arranging the displayed colors in contiguous groups related to web-safe colors, non-web safe colors and achromatic colors as recited in independent claims 59 and 69. In fact, Figure 6 of Beretta discloses that element 84 is a display of mixed colors and therefore does not display contiguous groups of different types of colors or colors having different properties (e.g., web-safe or non-web-safe) as recited in the independent claims.

As motivation for making the combination, the Office Action (pages 4-5) asserts that the combination would allow users to better select suitable colors by displaying related colors adjacent one another by applying the "well-known principles of color perception theory that human perception of color is influenced by the effect of adjacent colors." Even if the combination were made for the above reason, a user would not be able to tell whether a color is web-safe or non-web-safe merely if the colors were influenced by adjacent colors. This is because the human perception of color is not influenced by whether a color is web-safe or non-web-safe, but by how the color is viewed with respect to adjacent colors. The skilled artisan at the time of the invention would not have been motivated, at least, by the disclosure of the Adobe reference to differentiate between web-safe colors and non-web-safe colors in the same color palette, nor does the Microsoft reference or the Beretta reference, individually or in combination, overcome this deficiency in the Adobe Reference.

Therefore, Applicants respectfully submit that the applied prior art references fail to disclose or suggest all of the features recited in independent claims 59 and 69, in particular, the feature of placing the achromatic colors, the web-safe colors, and non-web-safe colors in three contiguous groupings within the color palette.
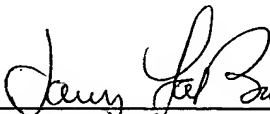
It is respectfully submitted that claims 59-69 are in condition for allowance and notification to that effect is respectfully submitted.

Should the Examiner have any questions or believes a telephone conference with the undersigned would expedite the prosecution of the present application, he is invited to contact the undersigned.

Respectfully submitted,

BUCHANAN INGERSOLL PC

Date: ___June 12, 2006___   By: _____ RN28632
                                        Martin E. Miller
                                        Registration No. 56022

P.O. Box 1404
Alexandria, Virginia 22313-1404
(703) 836-6620